

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN ROBERT DEMOS JR.,

Petitioner,

V.

DONALD R HOLBROOK,

Respondent.

Case No. C20-0606-RSL-MAT

REPORT AND RECOMMENDATION

Bar-order litigant John Demos, a state prisoner who is currently incarcerated at the Washington State Penitentiary in Walla Walla, Washington, has filed an application to proceed *in pauperis* with a proposed 28 U.S.C. § 2241 habeas petition through which he seeks immediate release in light of the COVID-19 pandemic. Dkt. 1.

The Court recommends that this action be dismissed without prejudice. Section 2241 provides the authority for granting habeas relief to a person “who is not in custody pursuant to a state court judgment” but, rather, who is in custody for some other reason, such as pretrial detention or awaiting extradition. *White v. Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc); *see also Stow v. Murashige*, 389 F.3d 880, 886 (9th Cir. 2004); *McNeely v. Blanas*, 336 F.3d 822, 824 & n. 1 (9th

1 Cir. 2003). In contrast, when a prisoner is in custody pursuant to a state court judgment, 28 U.S.C.
2 § 2254 constitutes his only habeas remedy for any challenge to his detention, regardless of the
3 nature of such a challenge. *White*, 370 F.3d at 1009-10. Because it is apparent from petitioner's
4 submissions that he is in custody pursuant to a state court judgment, this action cannot proceed
5 under § 2241.

6 Petitioner should not be granted leave to file an amended petition under § 2254. An Order
7 of this Court provides for the return without filing of any petition by petitioner that seeks an
8 extraordinary writ pursuant to 28 U.S.C. §§ 1651, 2253 or 2254, unless accompanied by the filing
9 fee. *See Demos v. Stanley*, MC97-0031-JLW (W.D. Wash. Mar. 13, 1997). Petitioner has not paid
10 the filing fee. Moreover, petitioner may not proceed with a second or successive habeas petition
11 here unless and until the Ninth Circuit authorizes its filing, which it has not done. *See* 28 U.S.C.
12 § 2244(b)(3)(A).

13 For these reasons, the Court recommends that this action be DISMISSED without prejudice
14 and that petitioner's application to proceed *in forma pauperis*, Dkt. 1, be DENIED as moot. A
15 proposed order accompanies this Report and Recommendation.

16 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
17 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
18 and Recommendation is signed. Failure to file objections within the specified time may affect
19 your right to appeal. Objections should be noted for consideration on the District Judge's motions
20 calendar for the third Friday after they are filed. Responses to objections may be filed within
21 **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be
22 ready for consideration by the District Judge on **May 22, 2020**.

23 / / /

1 Dated this 30th day of April, 2020.

2
3
4



5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Mary Alice Theiler
United States Magistrate Judge